



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

April 20, 2006

The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Conyers:

I am responding to your February 23, 2006 letter to Secretary Rumsfeld, Secretary Chertoff, Attorney General Gonzales, and me. In your letter, you asked four questions pertaining to the review the Committee on Foreign Investment in the United States ("CFIUS") conducted of DP World's acquisition of the Peninsular and Oriental Steam Navigation Company.

Your first two questions inquire as to the legal interpretation of Section 721(b) of the Defense Production Act ("DPA"), 50 U.S.C. App. § 2170(b), known as the Byrd Amendment. Recently, the State of New Jersey filed a lawsuit (Corzine v. Snow) challenging CFIUS's conclusion that the Byrd Amendment did not require a formal investigation of the DP World acquisition. On February 27, 2006, the Department of Justice filed a responsive brief in that lawsuit. I am enclosing that brief and draw your attention to pages 19-24, which set forth the Executive Branch's interpretation of the Byrd Amendment. The Department of Justice noted at page 22 that this interpretation has been followed by the Executive Branch since the Byrd Amendment was first enacted in 1992.

Question three in your letter seeks information about the President's delegation of authority under the Exon-Florio provision of the DPA, 50 U.S.C. App. § 2170. This provision authorizes the "President or the President's designee" to investigate mergers, acquisitions, and takeovers by foreign persons of U.S. companies to determine the effects on national security of such transactions. In 1975, pursuant to Executive Order 11858, as amended, the President established CFIUS. In 1988, pursuant to Executive Order 12661, the President delegated to CFIUS the authority to initiate and conduct investigations under Exon-Florio. I enclosed copies of these Executive Orders for your review.

Also in question three, you asked if the President reviewed the CFIUS decision relating to the DP World transaction. CFIUS completed review of this transaction with a determination not to investigate. Such a determination concluded review of the transaction under Exon-Florio.

Lastly, in response to question four in your letter, CFIUS does not “approve” transactions under Exon-Florio. Rather, CFIUS reviews transactions for which it has received notice. Since 2001, CFIUS has received 275 notices of transactions. CFIUS initiated investigations in 9 of the 275 cases.

As you probably know, on March 15, 2006, DP World announced it would sell P&O Ports North America to a U.S. company. CFIUS and its member agencies will monitor closely the actions of DP World as it moves to complete the plans it has announced.

I hope this information is helpful as you continue to consider this important matter.

Sincerely,

A handwritten signature in black ink that reads "John W. Snow". The signature is written in a cursive, flowing style.

John W. Snow

Enclosures